IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.570 OF 2004
IN
SUMMARY SUIT NO.1643 OF 2004

Om Prakash Upadhyay ....Plaintiff
V/s.
M/s.Shreeji Chemicals Co. & Anr. ....Defendants

Mr.J.P. Sen with Mr.F. Dubash and Ms.Nita Solanki i/b Kiran Jain & Co. for the Plaintiff. Mr.Sanjay Jain i/b Mr.Suresh Jain for Defendant Nos.1 and 2.

CORAM : S.J. VAZIFDAR, J.
DATED : 23RD AUGUST, 2007.

P.C. :

1. The suit is filed to recover a sum of Rs.17,92,560/- together with interest at 18% p.a.

2. The suit is filed in respect of the goods sold and delivered by the Plaintiff to the Defendants under 84 invoices.

3. As far as the first 80 invoices of the aggregate value of Rs.9,30,071/- are concerned, the defences are similar to those raised in Summons for Judgment No.571 of 2004 in Summary Suit No.1732 of 2004. The defences have already been rejected by a separate order passed today in Summons for Judgment

No.571 of 2004 in Summary Suit No.1732 of 2004. For the said reasons, the defence regarding the first 80 invoices is rejected.

4. Admittedly, a sum of Rs.5,70,000/- has been paid by the Defendants to the Plaintiff. In the circumstances, the Plaintiff shall be entitled to a decree for the balance amount of Rs.3,30,371/-.

5. As far as the remaining four invoices are concerned, prima-facie it does appear that the goods were received inter-alia in view of the Defendants not having taken inspection of the documents though offered and in view of the Defendants not having denied specifically and in any effective manner the Plaintiff's notice dated 21.2.2007 under Section 138 of the Negotiable Instruments Act demanding a sum of Rs.18,00,000/- which probably would include the amounts other than those covered by the said first eighty invoices. Despite the same, I intend granting unconditional leave in so far as these invoices are concerned, as there appears to be some triable issue regrading the same.

6. In the circumstances, leave to defend is refused to the extent of Rs.3,30,371/-. The Summons

for Judgment is made absolute and the suit is decreed to the extent of Rs.3,30,371/- together with interest at the rate of 18% p.a. from the date of the suit till payment and/or realization. The Defendants would be entitled to unconditional leave to defend in respect of the balance amount.